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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Chairman-Rapporteur: Mr. Jorge Rhenán Segura (Costa Rica)

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Introduction

1. The Commission on Human Rights, at its forty-eighth session decided, in its resolution 1992/43 of 3 March 1992, to establish an open-ended inter-sessional working group to elaborate a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, using as a basis for its discussions the draft text proposed by the Government of Costa Rica (see E/CN.4/1991/66), and to consider the implications of its adoption and the relationship between the draft optional protocol, regional instruments and the Committee against Torture.

2. The Economic and Social Council, in its resolution 1992/6 of 20 July 1992, authorized an open-ended working group to meet for a period of two weeks prior to the forty-ninth session of the Commission on Human Rights.

3. In compliance with the above-mentioned resolutions, the working group, at its first session, held 16 meetings, from 19 to 30 October 1992.

4. Having considered the first report submitted by the working group (E/CN.4/1993/28 and Corr.1), the Commission on Human Rights, at its forty-ninth session, adopted resolution 1993/34 of 5 March 1993, in which it welcomed the substantial progress made by the working group at its first session, which had enabled an exhaustive analysis to be made of the essential basic principles of the draft. At the request of the Commission, the working group held its second session from 25 October to 5 November 1993 and submitted its report to the Commission (E/CN.4/1994/25 and Add.1)

5. The Commission on Human Rights, at its fiftieth session, in its resolution 1994/40 of 4 March 1994, took note of that report and requested the open-ended working group to meet between sessions for a period of two weeks prior to the fifty-first session of the Commission in order to pursue its work and to submit a new report to the Commission.

6. The Economic and Social Council, in its decision 1994/250 of 22 July 1994 authorized an open-ended working group of the Commission to meet for a period of two weeks prior to its fifty-first session.

7. Consequently, the working group held its third session from 17 to 28 October 1994. It was opened by the Assistant Secretary-General for Human Rights, who made an introductory statement.

I. ORGANIZATION OF THE SESSION

A. Election of officers

8. At its 1st meeting, on 17 October 1994, the working group elected Mr. Jorge Rhenán Segura (Costa Rica) as Chairman-Rapporteur.

B. Attendance

9. The representatives of the following States, members of the Commission on Human Rights, attended the meetings of the working group, which were open to all members of the Commission: Angola, Australia, Austria, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Cuba, Cyprus, Ecuador, Finland, France, Germany, Hungary, India, Japan, Libyan Arab Jamahiriya, Kenya, Mexico, Netherlands, Nigeria, Pakistan, Peru, Poland, Russian Federation, Sri Lanka, Syrian Arab Republic, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela.

10. The following States non-members of the Commission on Human Rights were represented by observers at the meetings of the working group: Algeria, Argentina, Bolivia, Denmark, Egypt, El Salvador, Greece, Guatemala, Honduras, Iraq, Israel, New Zealand, Norway, Panama, Philippines, Senegal, South Africa, Spain and Sweden.

11. Switzerland, which is not a member of the United Nations, was represented by an observer.

12. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings of the working group: Amnesty International, International Commission of Jurists and Human Rights Watch.

13. Upon the decision of the working group, the Association for the Prevention of Torture and the World Peace Prayer Society which do not have consultative status with the Economic and Social Council, were also represented by observers.

14. The International Committee of the Red Cross was represented by an observer.

C. Documentation

15. The working group had before it the following documents:

E/CN.4/1993/WG.11/L.1	Provisional agenda
E/CN.4/1994/WG.11/WP.1	Working paper submitted by the secretariat pursuant to Commission on Human Rights resolution 1994/40
E/CN.4/1994/WG.11/WP.2	Comments and proposals submitted by the Syrian Arab Republic and the Special Rapporteur of the Commission on Human Rights on the question of torture
E/CN.4/1991/66	Letter dated 15 January 1991 from the Permanent Representative of Costa Rica to the United Nations Office at Geneva addressed to the Under-Secretary-General for Human Rights

The text of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and an explanatory note by the Council of Europe

The text of the Inter-American Convention to Prevent and Punish Torture.

D. Organization of work

16. At its 1st meeting, on 25 October 1993, the working group adopted its agenda, contained in document E/CN.4/1994/WG.11/L.1.

17. The Chairman-Rapporteur made an opening statement, referring to the work accomplished during the second session of the working group. He pointed out that the working group had generally agreed that, should its work continue in the same manner, there was a possibility that, within a reasonable period of time, a final text could be elaborated which could be of great significance in the field of the prevention of torture. He expressed the wish that this drafting process should be speeded up in the light of the call of the World Conference on Human Rights for the early adoption of an optional protocol to the Convention against Torture. He recalled that the draft submitted by the Government of Costa Rica should constitute the basis and frame of reference for the group's deliberations. He also suggested that the working group's reports adopted at two previous sessions, together with the comments and suggestions that had been made by Governments, specialized agencies, supervisory bodies and non-governmental organizations (E/CN.4/1994/WG.11/WP.1 and WP.2), should provide the basis for decisions to be taken on revisions or amendments to the draft optional protocol at the present session. He invited the group to continue its work and submit its report to the Commission, in accordance with resolution 1994/40.

18. The working group established an informal open-ended drafting group chaired by Ms. Ann-Marie Pennegard, the observer for Sweden, to work out proposals on the concrete wording of the articles considered and revised by the working group. Accordingly, the working group decided to work its way, article by article, through the draft submitted by Costa Rica and its first and second reports, modifying and/or replacing particular provisions in the Costa Rican text as necessary.

19. It was also agreed that when the whole text had been covered in this way, further consideration would have to be given to the title of the draft optional protocol as well as to its preamble. More generally, it was agreed to consider the articles thematically in order to organize their elaboration.

20. It was also decided that, when the working group had completed its first reading of the draft in its entirety, a second reading of the text would be undertaken with a view to its final adoption by the working group.

II. CONSIDERATION AND DRAFTING OF PARAGRAPHS AND ARTICLES

21. In the light of the above-mentioned decisions on its working methods, the working group embarked on its examination and revision of the draft submitted by Costa Rica (E/CN.4/1991/66) and supplemented by the comments and suggestions of Governments, specialized agencies, treaty bodies and

non-governmental organizations, contained in E/CN.4/1994/WG.11/WP.1 and WP.2. The drafting process was mainly undertaken by the informal drafting group, which attempted to reconcile the various proposals under consideration. Therefore, most of the time was allocated to meetings of the informal drafting group for the elaboration of articles.

22. The results of the work of the informal drafting group were reported to the plenary meetings of the working group which considered those results and approved the text of relevant articles. The text of articles 1 to 9, 12, 12 bis and 13 as contained in the annex to the present report, constitute the outcome of the beginning of the first reading of the optional protocol during the second and third sessions of the working group. As to articles 10 and 11, no definite conclusions were reached. A proposal to combine articles 10 and 11 as contained in the annex was supported by several delegations. A few other delegations favoured a continued separation of the two articles, and a proposal, as contained in the annex, was presented. It was decided that the working group would resume its elaboration of articles 10 and 11 at a later stage.

23. In compliance with the established practice, this report describes the main issues that were raised in debate at the plenary meetings of the working group.

Article 8

24. Article 8 was considered by the working group at its second session, in 1993, and the views expressed during the general debate were submitted to the third session of the working group (see E/CN.4/1994/25). At the third session, the working group gave further consideration to article 8, at its 1st and 4th meetings, on 17 and 28 October 1994.

25. It was felt that the issue dealt with in paragraph 1 of article 12 should be addressed in the context of article 8. Some delegations were of the view that consent or agreement of the State concerned should be required for each visit of a delegation of the Sub-Committee. With that end in view, one delegation suggested starting article 8 with a provision for the prior agreement of the State party to conduct a mission. In its view, the Sub-Committee should notify the Government concerned of its intention to organize a mission in order to resolve the problem of consent and to have a reasonable period of time to organize such a mission.

26. Some other delegations pointed out that, if such strict consent or agreement were required, the preventive character of the new system might be greatly diminished. They expressed the opinion that such consent or agreement was already implied in the ratification of the protocol, as reflected in its article 1. In addition, inclusion of that new disposition would grant a right of veto to States Parties and would be contrary to the preventive nature of the draft protocol.

27. A number of delegations argued that all missions should be based on the stipulated criteria of non-selectivity, objectivity and transparency. Other delegations considered that these were in fact principles and that such "criteria" could lead to the exclusion of an ad hoc or follow-up mission which would affect the preventive nature of the draft optional protocol.

28. Some delegations felt that the word "mission" needed further clarification and were in favour of replacing it by the word "visit". Most delegations, however, were in favour of maintaining the distinction between the two notions. In this connection, it was proposed to refer to "mission" in the case of a Sub-Committee delegation entering the State territory and to refer to "visit" in the case of such a delegation visiting any one place of imprisonment or detention.

29. One delegation, supporting the comments of the Government of Egypt contained in document E/CN.4/WG.11/WP.1, paragraph 67, considered that the draft optional protocol should explicitly provide for a "reasonable interval of time" between the notification of a State concerned and the dispatch of the Sub-Committee's mission, instead of leaving this question to the rules of procedure of the Sub-Committee. It specified that it was important to make provision for such an interval in view of the fact that most countries of the third world would frequently be unable to provide the Sub-Committee with the requisite facilities and information for various practical reasons relating to their current socio-economic situation and the circumstances of their governmental administration.

30. One delegation was of the view that the word "reasonable" implied that the Sub-Committee should give the State concerned reasonable time to take necessary measures to make the mission or visits as effective as possible. However, if a majority of delegations so wished, the length of time that might elapse between the notification of the organization of a mission and the mission itself could be specified.

Article 9

31. Article 9 had been considered by the working group during its second session. At its third session, the informal drafting group submitted to the plenary meeting of the working group the text of article 9 as generally accepted by the informal drafting group on 21 October 1994. It was pointed out that paragraph 4 of that article accommodated the balance in the relationship between the Sub-Committee and bodies established under other conventions.

32. One delegation suggested inserting into this article the following provision:

> "If, on the basis of a regional convention, a system of visits to places of detention similar to the one of the present Protocol is in force for a State Party, the Sub-Committee shall consult with organs established under such a regional convention with a view to coordinating activities."

33. Another delegation proposed adding to the end of that provision the following words: "in order to ensure universal application of this Protocol to avoid a duplication of existing functions".

34. One delegation suggested deleting in that amendment the words "of this Protocol" and replacing them by the words "of an effective, universal system of torture prevention".

35. Regarding the text of article 9, as submitted by the informal drafting group, one delegation suggested putting into square brackets the word "cooperate" in paragraph 3 and adding after it the new word "consult", also in square brackets. The working group agreed with that proposal.

36. Another delegation expressed concern both as to the lack of legal precision of the text of article 9, paragraph 3, as adopted by the informal drafting group, and at the bracketing of the phrase "and avoid duplication of work and missions/visits" and of the third subparagraph of the paragraph which was not matched by bracketing of the second subparagraph. That delegation proposed the following alternative text for paragraph 3:

> "If, on the basis of a regional convention, a system of visits to places of detention similar to the one under the present Protocol is in force for a State Party, the Sub-Committee shall, without prejudice to its responsibility for ensuring the universal application of this Protocol and promoting its objectives, consult the regional body established under such a regional convention, in order to cooperate with a view to avoiding duplication of work and missions/visits."

37. The text of article 9 as revised by the informal drafting group and amended at the plenary meeting was adopted by the working group on 21 October 1994.

Articles 10 and 11

38. The articles 10 and 11 were considered by the working group at its 2nd, 3rd, and 4th plenary meetings on 19, 26 and 28 October 1994.

39. Concerning paragraph 1 of article 10, one delegation requested that it should be deleted, on the grounds that the Sub-Committee did not need the assistance of experts since the members of the Sub-Committee themselves would be experts in the pertinent fields.

40. Some delegations opposed the use of experts to assist the Sub-Committee in carrying out missions. Other delegations wanted to replace the term "expert" by the term "adviser". Other delegations, assuming that the members of the Sub-Committee would be few in number, considered that they would be physically unable to perform all those duties in person and could not possibly have all the professional expertise required in the relevant fields. A wide range of expertise was often essential in order to complete a mission in a reasonable time. Consequently, the assistance of experts acting as advisers would be necessary.

41. Several delegations stressed the need to have clear criteria for the selection of experts. Some speakers proposed that the State Party should draw up a list of experts from which the Sub-Committee would make its choice. A number of delegations considered that the experts should come from the country visited and one delegation suggested that that criterion should be set out in a new paragraph 3.

42. One delegation stated that there was an agreement that no provisions on the use of only one language during interviews by the Sub-Committee should be included in the optional protocol. Some delegations pointed out that there was not such an agreement.

43. As to article 11, paragraph 1, one delegation proposed replacing "duties" by "principles".

44. One delegation put forward a proposal to combine articles 10 and 11 in a single article. That proposal was supported by some delegations. It is included in the annex. Another delegation put forward a proposal to amend articles 10 and 11 as contained in document E/CN.4/1991/66 to define the functions of advisers and the circumstances in which advisers might be employed. That proposal was supported by some other delegations. It is also included in the annex.

Article 12

45. The working group considered article 12 at its 2nd, 3rd and 4th plenary meetings, on 19, 26 and 28 October 1994.

46. Some delegations argued in favour of the inclusion of a provision stipulating that members of the delegation should respect the national laws and regulations while undertaking the visits in the territory of the State Party concerned. Other delegations were of the opinion that national laws and regulations should not be invoked as a means of contravening the objectives of the visits and, in particular, of restricting the delegation's access to places of detention. Consequently, those delegations considered the reference to national laws and regulations as unnecessary.

47. Some delegations expressed serious reservations with regard to the term "deprived of their liberty" in connection with references, contained in article 12, to article 1. A proposal was made by some delegations that further consideration be given at the second reading to adding the words "by arrest or detention", following the words "deprived of their liberty".

48. With respect to paragraph 2 of article 12, one delegation suggested that all the words from the beginning of the paragraph until after "in particular" should be deleted, in order to achieve a more precise formulation. It was to be understood, however, that the provision of the proper facilities to the mission included the non-obstruction of its related activities. It also suggested the revision of the text of the following subparagraphs:

Subparagraphs 2 (b) and (c): those provisions were acceptable, provided the above-mentioned proposals concerning article 1 (1) were being met, as

otherwise the State Party would assume responsibilities which it objectively might not be in a position to fulfil;

Subparagraph 2 (e): replace "convenient" with "adequate", thus englobing also security, financial and other practical aspects that might arise if the presentation of a person in a particular place requested (for example, outside the place of detention) by the mission met with difficulties;

Subparagraph 2 (f): add at the end: "having regard to applicable rules of national law and professional ethics."

49. One delegation emphasized the need to provide a delegation of the Sub-Committee with unrestricted access to the places of detention.

50. With regard to paragraph 3, the view was expressed by a delegation and supported by another delegation that square brackets should be put around the words "without witnesses" in the first sentence. The view was also expressed by a delegation and supported by another delegation that square brackets should be put around the words "inside or outside his place of detention" in the same sentence.

51. In the view of two delegations, there was a need to strengthen the protection of the privacy of individuals and consequently there was also a need for relevant modification of paragraph 3. One delegation proposed the following text to that effect:

"3 bis. In seeking information, the delegation shall have regard to applicable rules of national law relating to privacy, data protection and principles of medical ethics."

52. Another delegation proposed deleting the words "to applicable rules of national law", inserting before the word "privacy" the words "a person's right to" and replacing the words "data protection" by the words "protection of personal data".

53. The above provision as revised by the informal working group was inserted in article 12 as paragraph 3 bis.

54. For the text of article 12, as revised by the informal drafting group, see the annex.

Article 13

55. At its 2nd and 3rd meetings on 19 and 26 October 1994, the working group considered article 13.

56. Concerning paragraph 1 of article 13, some delegations considered that the conditions on which a State Party might object to a visit should be determined. Referring to article 9 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, they were of the view that competent authorities of the State Party concerned might make representations to the Sub-Committee against a visit at the time or to

the particular place proposed by the Sub-Committee. Such representations might only be made on grounds of national defence, public safety, serious disorder in places where persons were deprived of their liberty, the medical condition of a person or that an urgent interrogation relating to a serious crime was in progress.

57. One non-governmental observer proposed adding to those reasons, that of "serious risk relating to the loss of lives of members of a delegation". Another non-governmental observer proposed replacing the words "against a particular visit" by the words "against visiting a particular place".

58. Some delegations expressed the opinion that there was no necessity to extend reasons for postponement of visits. One delegation pointed out that the provisions of article 13, once more demonstrated that there was a need to maintain the distinction between the two notions: "mission" and "visit".

59. One delegation was of the view that the provisions of article 13 should be considered in close connection with the provisions of article 18, paragraph 3. No reservations might be made in respect of provisions of the protocol. The competent authorities could not object to a mission as such. They might object to a visit if there were "urgent and compelling reasons". The possibility of transferring a person to another place, referred to in paragraph 2 of that article, could resolve the problem, if undertaken through consultations and cooperation with the State Party concerned.

60. Several delegations and one non-governmental observer supported by other delegations emphasized that so-called "states of emergency" of a general and sometimes prolonged character should not justify suspension of a visit, unless there were some specific and ongoing disorder that could justify such a step. Particular care would be required in connection with that provision, which should not operate as a mechanism to frustrate the preventive function of the system. The observation was made that article 13 was in the nature of a "negotiated reservation" to the optional protocol, which must be as limited in nature as possible to avoid abuse.

61. For the text of article 13, as revised by the informal drafting group, see the annex.

New articles

62. One delegation submitted the text of a new article 12 bis which read as follows:

> "A State Party shall disseminate information about this Protocol and the tasks of the Sub-Committee and the facilities to be provided to the Sub-Committee during the mission to all concerned authorities and ensure inclusion of such information in the training of relevant personnel, civil and military, who are involved in the custody, interrogation or treatment of persons deprived of their liberty."

63. This article as revised by the informal drafting group was adopted by the working group as article 12 bis. It was pointed out that it would be conducive to the preventive nature of the protocol by filling in a lacuna

concerning the obligation of a State Party to disseminate information relating to the protocol to relevant groups. That provision followed the similar obligations of the States Parties to the Convention Against Torture and Other Cruel and Inhuman, or Degrading Treatment or Punishment, the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977.

64. Another delegation submitted an additional article 12 ter which read as follows:

> "Each State Party shall inform the Sub-Committee of the name and address of the authority competent to receive notifications to its Government, and of any liaison officer it may appoint."

65. That delegation pointed out that draft article 12 ter was based on article 15 of the European Convention for the Prevention of Torture and was aimed at facilitating notification under the protocol. That provision should oblige States Parties to inform the Sub-Committee of the authority to which such notification should be sent. All European States had nominated liaison officers who had proved to be very useful partners in facilitating the tasks of the relevant body, in particular when making visits. Some delegations did not support the proposal.

66. The working group decided to defer the consideration of article 12 ter to its fourth session.

67. One delegation felt that the text of both suggested articles should be considered as new articles of the protocol. Some delegations agreed with that view.

III. GENERAL STATEMENTS

68. Some delegations expressed concern that a number of proposals, reflected in the annex would have the effect of significantly restricting or qualifying the applicability of provisions in the initial draft (E/CN.4/1994/66) and that they might, if ever adopted, seriously affect the functioning of the envisaged Sub-Committee and defeat the object of the envisaged protocol, i.e. establishing an effective system of visits in order to prevent torture and other cruel or degrading treatment. Those delegations had serious doubts about the usefulness of a protocol, which, if thus weakened, would give room to States Parties to invoke its provisions with a view to raising obstacles to the effective implementation of its fundamental objectives.

69. One delegation expressed the opinion, supported by other delegations, that the main object and effectiveness of an optional protocol to the Convention against Torture were linked to the equal implementation of all its provisions by all States Parties and the degree of cooperation established between the envisaged body and the State Party. Thus, the envisaged body must respect and act in accordance with the principles of sovereignty, territorial integrity and non-interference in the internal affairs of other States.

70. Another delegation stated that the elaboration of an optional protocol should be in accordance with the provisions of the Convention itself and should not go beyond what had been accepted and ratified by the States Parties

on the basis of the principles contained in the Charter of the United Nations and on the basis of international law, particularly with respect to the sovereignty of States and the principle of non-interference in the internal affairs of States. The provisions of such an optional protocol should be applied, on a basis of equality, to all ratifying States. The principles of non-selectivity, objectivity and impartiality should be respected.

71. In the view of that delegation, international cooperation was the only road which could lead to genuine promotion and protection of human rights throughout the world, not the imposition of Western concepts and models. No working group or similar body was capable of revising or amending the provision of the Convention: that was the sole competence of the States Parties. In that regard, some of the proposals submitted by a group of delegations exceeded the mandate of the working group and ignored the competence of the States Parties, which was unacceptable.

IV. FUTURE WORK

72. At its 4th plenary meeting, on 28 October 1994, the informal drafting group agreed to the Chairman's proposals as to the form and content of the present report; it then discussed how the results achieved to date could best be continued. There was general agreement that some progress had been made at the third session and that a continuation of the work in the same way offered the prospect of the elaboration, within a reasonable period, of a text which could be of great value in the field of the prevention of torture. The working group considered that, if it was authorized to meet for a further session of two weeks at some point before the next session of the Commission, and were then mandated to pursue its work on the same basis as before, it could be expected that it would achieve further progress in the elaboration of the instrument under its consideration within an acceptable time. It would be helpful if the secretariat could prepare, to assist the working group at that further session, a working paper covering the articles that remained to be discussed and taking account of the comments and suggestions made by Governments, specialized agencies and non-governmental organizations, including those submitted during the session of the working group.

V. ADOPTION OF THE REPORT

73. The report was adopted at the 5th plenary meeting of the working group on ... 1995.

Annex

TEXT OF THE ARTICLES WHICH CONSTITUTE THE OUTCOME OF THE BEGINNING OF THE FIRST READING

Article 1

1. A State Party to the present Protocol shall permit visits in accordance with this Protocol to any place in any territory under its jurisdiction where persons deprived of their liberty by a public authority or at its instigation or with its consent or acquiescence are held or may be held [provided that full respect is assured for the principles of non-intervention and the sovereignty of States]. 1/

2. The object of the visits shall be to examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from [, and [to take] measures for the prevention of] torture and from other cruel, inhuman or degrading treatment or punishment in accordance with applicable international [standards], [instruments], [law].

Article 2

There shall be established a Sub-Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [of the Committee against Torture] [which shall carry out the functions laid down in the present Protocol] (hereinafter referred to as the Sub-Committee); the Sub-Committee shall be responsible for organizing missions to the States Parties to the present Protocol for the purposes stated in article 1.

Article 3

In the application of this Protocol, the Sub-Committee and [the competent national authorities of] the State Party concerned shall cooperate with each other. The Sub-Committee shall be guided by principles of confidentiality and impartiality.

1/ Several delegations did not agree with certain aspects of the text of paragraph 1 of article 1. They believed that each visit should have the consent of the State Party concerned. Several delegations also suggested that the words "any place in" should be deleted. One delegation had concerns in regard to the wording of the present draft of paragraph 1 of article 1 and reserved the right to revert to it in the light of future agreement on the remaining articles. These concerns did not refer to the words "any place in".

It was further decided by the working group, at its third session, to insert at the end of this footnote the following words: "A proposal was made by some delegations that further consideration be given at the second reading to adding the words 'arrest or detention', following the words 'deprived of their liberty'".

Article 4

1. The Sub-Committee shall consist of [number to be inserted] members. After the [number to be inserted] accession to the present Protocol, the number of members of the Sub-Committee shall increase to [number to be inserted].

2. The members of the Sub-Committee shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights.

3. No two members of the Sub-Committee may be nationals of the same State.

4. The members of the Sub-Committee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Sub-Committee effectively.

Article 5

1. The members of the Sub-Committee shall be elected in the following manner:

(a) Each State Party may nominate up to three persons possessing the qualifications and meeting the requirements set out in article 4 [one of whom may be a national of a State Party other than the nominating State Party];

[(b) From the nominations received the Committee against Torture shall prepare a list of recommended candidates, taking due account of article 4 of the present Protocol. This list shall consist of not less than twice the number of members of the Sub-Committee to be elected and not more than two and a half times the number of members to be elected;]

(c) The members of the Sub-Committee shall be elected by [the States Parties] [the Committee against Torture] by secret ballot [from the list of recommended candidates prepared by the Committee against Torture].

2. Elections of the members of the Sub-Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Sub-Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

3. The initial election shall be held no later than [to be determined] after the date of the entry into force of the present Protocol. At least four months before the date of the meeting of the Committee against Torture which precedes the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them [and shall submit it to the

Chairman of the Committee against Torture]. [The Chairman of the Committee against Torture shall submit to the Secretary-General the list of recommended candidates prepared in accordance with paragraph 1 (b) of this article.] [The Secretary-General shall submit this list of recommended candidates to the States Parties.]

4. In the election of the members of the Sub-Committee, eligible for election in accordance with article 4, consideration shall be given to equitable geographical distribution of membership, to a proper balance among the various fields of competence referred to in article 4 and to the representation of different forms of civilization and of the principal legal systems.

Consideration shall also be given to a balanced representation of women and men on the basis of the principles of equality and non-discrimination.

5. If a member of the Sub-Committee dies or resigns or for any other cause can no longer perform the member's Sub-Committee duties, [the Committee against Torture shall, after having consulted the State Party of which the member was a national,] [the State Party which nominated the member shall] appoint another person of the same nationality possessing the qualifications and meeting the requirements set out in article 4 to serve for the remainder of the member's term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 6

The members of the Sub-Committee shall be elected for a term of four years. They shall be eligible for re-election [once] [twice] if renominated. The term of half of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these members shall be chosen by lot by the Chairman of the meeting referred to in article 5, paragraph 2.

Article 7

1. The Sub-Committee shall elect its officers for a term of two years. They may be re-elected [once].

2. The Sub-Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Half plus one members shall constitute a quorum;

(b) Decisions of the Sub-Committee shall be made by a majority vote of the members present;

(c) The Sub-Committee shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Sub-Committee. After its initial meeting, the Sub-Committee

shall meet at such times as shall be provided in its rules of procedure [, but it shall meet for a regular session at least twice a year.]

4. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of [the Committee against Torture and] the Sub-Committee under this Protocol.

Article 8

The Sub-Committee shall [undertake missions] [establish a programme of missions] to States Parties [based on the criteria capable of guaranteeing the principles of non-selectivity, impartiality, objectivity, transparency and universality] [based on criteria consistent with the principles set out in article 3.] [Apart from programmed missions, it shall also undertake other missions as appear to it to be appropriate].

[Those missions shall be] [mutually agreed between the Sub-Committee and the State Party concerned, in a spirit of cooperation] [undertaken by the express consent of the State Party concerned].

[Without prejudice to the provisions of article 1], [the modalities for carrying out each mission shall be mutually agreed between the Sub-Committee and the State Party concerned, in a spirit of cooperation] [the Sub-Committee and the State Party concerned shall engage in consultation in order to determine the modalities of the mission].

[In preparation for such a mission], the Sub-Committee shall send a written notification to the Government of the State Party concerned of its intention to organize a mission [together with a detailed plan of the mission] [and after consultations with the State Party on the modalities of the mission]. [After such notification,] the Sub-Committee may at any time visit any place referred to [in its detailed plan after a written agreement is given by the said Government] [in article 1, paragraph 1].

Article 9

1. The Sub-Committee [shall] [may] decide to postpone a mission to a State Party if the State Party concerned has agreed to a scheduled visit to its territory by the Committee against torture, pursuant to article 20, paragraph 3 of the Convention.

2. The Sub-Committee, while respecting the principles set out in article 3, is encouraged to cooperate with relevant United Nations organs and mechanisms as well as international, regional and national institutions or organizations working towards strengthening the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment.

3. If, on the basis of a regional Convention, a system of visits to places of detention similar to the one under the present Protocol is in force for a State Party, the Sub-Committee shall still be responsible for missions/visits to such a State Party under this Protocol assuring its universal application. However, the Sub-Committee and the bodies established under such regional

conventions are encouraged to [cooperate] [consult] with a view to promote the objectives of this Protocol [and avoid duplication of work and missions/visits].

Such cooperation may not exempt the States Parties belonging also to such conventions from cooperating fully with the Sub-Committee, nor [exempt] [preclude] the Sub-Committee from carrying out missions/visits to the territories of those States in the fulfilment of its mandate.

[Each State Party belonging also to such regional conventions is encouraged to submit to the Sub-Committee, on a confidential basis, visit reports drawn up by the regional body in respect of that country and response of the State Party to it.]

4. The provisions of the present Protocol do not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977, or the possibility for any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Possible consolidation of articles 10 and 11*

[1. As a general rule, missions shall be carried out by at least two members of the Sub-Committee.

2. The Sub-Committee may, if it considers it necessary or advisable [in order to carry out its tasks efficiently and effectively, be assisted by advisors and interpreters.

2(a). The Sub-Committee shall select advisors from a list of experts known for their professional knowledge and experience in the areas covered by this Protocol to be prepared by the United Nations Centre for Human Rights in cooperation with the United Nations Crime Prevention Branch. All States Parties are invited to submit names of prospective advisors possessing the required qualifications to the United Nations Centre for Human Rights for consideration in preparing the list.

2(b). Advisors shall be bound by the same principles of independence, impartiality and availability as the members of the Sub-Committee.

2(c). Advisors shall be subordinate to and assist the Sub-Committee. They shall in all respects act on the instructions and under the authority of the Sub-Committee.

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* The text has not so far been approved by the working group (see also paras. 22 and 38-44 of the report).

3. No member of a delegation shall be a national of the State to be visited.

4. A State Party may exceptionally and for reasons given confidentially declare that an advisor or interpreter assisting the Sub-Committee may not take part in a mission to territory under its jurisdiction.

5. The names of advisors and interpreters selected to assist a particular mission shall be specified in the notification under article 12, paragraph 1.]

Article 10*

The missions/visits shall be carried out by at least two members of the Sub-Committee. Members of the Sub-Committee shall independently complete their missions/visits to the State Party concerned.

Article 11*

[1. In exceptional cases, the Sub-Committee may, after full consultations with, and having obtained permission of the State Party concerned, invite advisers in the personal name of members of the Sub-Committee who will carry out the missions/visits to assist them in the missions/visits. However, the number of the advisers invited shall in no case exceed two for each of the missions/visits.

2. Each State Party shall designate no more than five nationals of its State as advisers. The State Party shall submit its list of advisers to the Sub-Committee. The Sub-Committee shall notify States Parties of all lists received.

3. Those advisers shall have particular knowledge and experience in the area covered by the Protocol, and shall be bound by the criteria of independence, impartiality, objectivity, confidentiality and the code of professional conducts.

4. Advisers shall provide only, with their professional knowledge and experience, professional opinions to the members of the Sub-Committee on the given questions raised during the missions/visits. They shall in no case undertake any missions/visits by themselves.

5. A State Party may request that advisers be selected by the Sub-Committee from its list of advisers. The Sub-Committee shall respect such a request of the State Party. However, in case there is no adviser designated by the State Party, whose particular knowledge and experience meet the needs of the Sub-Committee, the Sub-Committee may, based on the recommendations by the said State Party, make a selection from the list of the other States Parties.

6. The State Party may, in any circumstances, decide that advisers should not undertake/or continue to undertake their assistance in the missions/visits. In this case, members of the Sub-Committee on the mission shall stop the assistance by the advisers concerned.]

Article 12

[1,6] [Members of the delegation shall respect the national laws and regulations while undertaking the visits in the territory of the State Party concerned.] [National laws and regulations may not be used or interpreted as means or measures contravening the programme and purpose of the visits.]

2. The State Party within whose jurisdiction a mission is to take place or is being carried out shall provide the delegation with all the facilities necessary for the proper fulfilment of their tasks and promote the full cooperation of all competent authorities. In particular, the State Party shall provide the delegation [in accordance with national laws and regulations] with the following:

(a) Access to its territory [and the right to travel without restriction] [for the purposes of the mission], [to freely visit places and persons referred to in article 1];

(b) All relevant information on the places referred to [in article 1], [in the detailed plan] including information requested about specific persons;

[(c) Unlimited access to any place referred to [in article 1], [in the detailed plan], including the right to move inside such places without restrictions];

(d) Assistance in gaining access to places where the delegation has reason to believe, [on the basis of well-founded and reliable information] that persons may be in situations referred to [in article 1] [and providing a convenient place for private interview];

(e) Providing access to, [and private interview with] any person in situations referred to [in article 1,] whom the delegation wishes to interview, at the request of the delegation and at a convenient location;

(f) Other information available to the State Party which is necessary for the delegation to carry out its task.

3. [Members of the delegation, [the Sub-Committee] may interview in private [at a convenient location to be provided by the competent authorities without being overheard], [without witnesses], and for the time they deem necessary, any person in situations referred to [in article 1]. They may also communicate without restriction with relatives, friends, lawyers and doctors of persons who are or have been in situations referred to [in article 1] and with any other person or organization that they think may be able to provide them with relevant information for their mission.]

[The members of the Sub-Committee] [where necessary, with the assistance of their advisors] may interview in private, persons in situations referred to [in article 1,] and may communicate with any person whom they believe, on the grounds of reliable information, can supply relevant information.]

3 bis. [In seeking information, the delegation shall have regard to a person's right to privacy, protection of personal data, as well as principles of medical ethics.]

4. No authority or official, on the basis of [any] [well-founded and reliable] information [regarding torture and other cruel, inhuman or degrading treatment or punishment,] provided to the Sub-Committee or its delegations, shall order, apply, permit or tolerate any sanctions against any person or [national legal] organization who provided that information, [and no such person or organization shall be otherwise prejudiced in any way.]

5. In urgent cases the delegation shall at once submit observations and recommendations either of general or specific nature to the competent authorities concerned.

Article 13

1. In exceptional circumstances, in the context of a mission the competent authorities of the State Party concerned may make representations to the Sub-Committee or its delegation against a particular visit. Such representations with respect to the particular place to be visited may only be made on the grounds that [serious] disorder, [national defence, public safety, medical condition of a person or/and urgent interrogation relating to a serious crime is in progress] temporarily prevent the carrying out of the visit. The existence or [formal] declaration of a State of Emergency as such shall not be invoked by a State Party as a reason to object to a visit.

2. Following any such representation, the Sub-Committee and the State Party shall immediately enter into consultations regarding the circumstances and seek agreement on arrangements to enable the Sub-Committee to exercise its functions expeditiously. [Such arrangements may include the transfer to another place of any person whom the Sub-Committee proposed to visit.] Until the visit takes place, the State Party shall provide information to the Sub-Committee about any person concerned.

New article 12 bis

Each State Party shall disseminate information about this Protocol, the tasks of the Sub-Committee and the facilities to be provided to the Sub-Committee during a mission to all concerned authorities and ensure the inclusion of such information in the training of relevant personnel, civil, police and military, who are involved in the custody, interrogation or treatment of persons in situations referred to [in article 1].